

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

MELVIN WARREN RIVERS,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

Case No.: 16CV1604 / 13CR3954

**ORDER GRANTING MOTION FOR  
ORDER FINDING LIMITED  
WAIVER OF ATTORNEY CLIENT  
PRIVILEGE AND REQUEST TO  
STAY BRIEFING SCHEDULE  
UNTIL THIS MOTION IS DECIDED**

Movant Melvin Warren Rivers has filed a Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255. Movant pled guilty to conspiracy to commit sex trafficking of a minor in violation of 18 U.S.C. § 1594(c). Movant claims his counsel was ineffective in failing to obtain footage of Movant's interrogation to challenge a search warrant and failing to investigate exculpatory evidence, including evidence from Movant's cell phone and his Facebook account.

Where a claim of ineffective assistance of counsel is asserted, there is an implied waiver of the attorney-client privilege. *Bittaker v. Woodford*, 331 F.3d 715, 719-20 (9th Cir. 2003). A court imposing a waiver must make sure the waiver is "no broader than needed to ensure the fairness of the proceedings before it." *Id.* at 720. The waiver must be "closely tailored . . . to the needs of the opposing party in litigating the claim in

1 question.” *Id.* If the holder of the privilege wishes to preserve the confidentiality of his  
2 communications, he must abandon the ineffective assistance of counsel claim that gives  
3 rise to the waiver. *Id.* at 721.

4 The Court finds Movant has waived the attorney-client privilege between himself  
5 and his trial counsel, Gerald McFadden, for the limited purpose of litigating his  
6 ineffective assistance of counsel claim. The Court therefore **GRANTS** Respondent’s  
7 Motion and orders Mr. McFadden to provide a declaration addressing the issues raised by  
8 Movant in his § 2255 Motion.

9 The deadline for Respondent to file a Response to Movant’s Motion is extended to  
10 **November 4, 2016.** Movant’s Traverse, should he elect to file one, must be filed by  
11 **December 19, 2016.**

12 **IT IS SO ORDERED.**

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14 Dated: September 15, 2016

  
15 Hon. Roger T. Benitez  
16 United States District Judge

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